



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 2431-99
13 May 1999

MSGT [REDACTED] JR USMC
[REDACTED]
[REDACTED]

Dear Master Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 12 April 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board noted you concede that you received a "CH" (change of reporting senior) fitness report for 1 April to 17 June 1998. Regardless of when this report was submitted, it establishes that the officer you say should have been your reporting senior (RS) for the period in question ceased to be your RS on 17 June 1998. They were unable to find that the commanding officer (CO) who submitted your contested fitness report was biased against you because your command failed the Marine Corps Administrative Analysis and Training (MCAAT) inspection. They were likewise unable to find that your CO obtained no input about your performance from your executive officer (XO), whom you contend should have been your RS. If you are correct that your XO did not counsel you on the areas cited in the nonpunitive letter of caution you received from the CO, the Board found this would not prove that the letter was unwarranted. They were unable to find your CO was incorrect in stating that you had received informal counseling on numerous occasions from the battalion

commander, XO, and sergeant major. In any event, they generally do not grant relief on the basis of an absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. They noted you concede that the MCAAT Mobile Assistance Team provided guidance before the inspection, and that your CO personally audited service record books. They were unable to find that your RS did not take due account of your "inherited errors" or your loss of an experienced unit diary clerk. They were not persuaded that you were improperly criticized for your failure to respond to counseling, lack of professional knowledge, failure to train subordinates, or inability to function without excessive supervision. They could not find that you received insufficient help from your CO, XO, or sergeant major. Finally, the positive achievements you cited did not convince them that you should have been recommended for promotion and reenlistment.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

2431-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
APR 12 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MASTER SERGEANT [REDACTED] JR., [REDACTED] USMC

Ref: (a) MSgt [REDACTED] DD Form 149 of 16 Dec 98
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 9 April 1999 to consider Master Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980618 to 981023 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report. **NOTE** The petitioner identified the reporting period as "980401 to 981023." However, there is no such report for that time frame. Based on the content of his arguments, the Board has determined that the report for the period 980618 to 981023 is the one he is challenging.

2. The petitioner contends the report is substantively inaccurate and unjust in that the officer who authored the report was not his actual Reporting Senior; that there was never any determination made to establish Lieutenant Colonel [REDACTED] as having that responsibility. The petitioner also believes the report contradicts several provisions of reference (b) and alleges the report is not in keeping with prior and subsequent performance. To support his appeal, the petitioner furnishes his own eight-page statement detailing the events and circumstances during the reporting period, as well as other documentation which he believes corroborates his position.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. When the petitioner signed Item 22 of the report, he verified that the information contained in Section A was correct. This included, but was not limited to, identification of both the Reporting Senior and Reviewing Officer of record. Had there been any question that Lieutenant Colonel [REDACTED] was not the petitioner's designated Reporting Senior, it was then that he should have surfaced that concern and the issue could have been

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resolved by the parties involved. Notwithstanding his commentary on the matter, reference (a) is short on anything that would disclaim Lieutenant Colonel [REDACTED] as the proper Reporting Senior.

b. In his official rebuttal to the challenged fitness report, the petitioner surfaced the same basic issues and concerns which he now raises in reference (b). Although only making a brief statement, as the Reviewing Officer, Major General [REDACTED] nevertheless adjudicated the overall evaluation in favor of the Reporting Senior. While some of the documents in reference (a) speak well of the petitioner, they simply do not override the judgmental evaluation and opinions of the reporting officials.

c. The Board points out that prior and subsequent performance (especially in different units and under other Reporting Seniors) is not a valid gauge in determining the accuracy, fairness, and validity of the challenged fitness report. Since each appraisal is for a finite period, it must be judged and evaluated on its own merits. However, since the petitioner surfaced this argument, the Board offers its observation that he has been the recipient of other adverse fitness reports, to wit: 820701 to 821213 (CH) and 971101 to 980204 (TR), the latter of which has been the subject of an appeal which was denied by both the PERB and BCNR.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Master Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

D.
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps